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**OGC HAS REVIEWED.**

The Honorable Lindsay C. Warren  
Comptroller General of the U. S.  
General Accounting Office  
Washington 25, D. C.

Dear Mr. Warren:

A primary duty of this Agency is the correlation and evaluation of intelligence relating to the national security for the benefit, particularly, of the National Security Council and the President. For this purpose I have established within the Central Intelligence Agency an office responsible for the preparation of national estimates.

Within that office, the Board of National Estimates sits as a group to consider the intelligence aspects of major world problems and, from all the information available to the Government, develops intelligence estimates upon which the major policy determinations of the Government are based. It is obviously necessary to staff this Board with the best minds that can be found to serve the Government in this capacity. In addition to the permanent staff, advice on special problems is obtained from experts in the fields concerned on a consultant basis.

Experience has indicated the necessity for the Board to have the best available advice on the military aspects of the problems with which they are concerned, particularly in this period of world-wide emergency when fighting is in progress or is threatened in various crucial areas. I believe it is clear that this advice should not be textbook or staff school opinion on a problem, but should come from mature and practical consideration of the type that grows out of long and wide experience in important posts. Such experience is found only in the small group of senior officers who have held the key positions in our military establishment during World War II and thereafter. Those on active duty are not readily available for consultation with the Board when and as needed. I do find that several of the outstanding Army and Naval officers of recent years are now retired

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and are available on consultant basis. In some respects retired status is preferable to active duty as it tends to eliminate bias and concern for the future which might color advice. I wish to contract, therefore, with several such retired officers for consultant services, intermittently as required by the Board of National Estimates, to be paid on a fee basis for each such consultation.

On the basis of your opinion to the Administrator of Veterans' Affairs in 26 Comptroller General 501 (B-62616) and your opinion to the Secretary of the Navy in 28 Comptroller General 381 (B-80106) in the case of Rear Admiral Schuyler, I believe that under these contracts retired officers would not be holding an office or position within the meaning of Section 212 of the Economy Act, approved June 30, 1932, 47 Stat. 406 as amended, codified as 5 U. S. Code 59a, and that therefore it would not be necessary to withhold the retired pay of such officers on those days on which they were paid fees for consultation under the contracts. I am aware, however, that the restrictions of Section 212 of the Economy Act run to the individual and I wish to make sure that I am not placing these retired officers in a position which might call for collection back of either the retired pay or consultation fees at some future date.

In the rule stated by you in the case of Admiral Schuyler at 28 Comptroller General 382, you state that your holding in an earlier case was "based on the proposition that where the nature of the duties required is purely advisory, generally performed at infrequent intervals, and the compensation payable therefor is upon a fee basis, as distinguished from a purely time basis, the status of the employee is not such as would constitute the holding of an office or position within contemplation of section 212." You further state that the absence of any one element is sufficient to take a particular case out of the rule. There is no question that the duties required from these retired officers would be purely advisory, and I believe there is no question of the propriety of paying them for such services on a fee basis, but I do not discover a clear-cut definition of the phrase "generally performed at infrequent intervals."

While the National Estimates Board is meeting constantly, a survey of the past months indicates it would call upon the military advisors for an average of approximately 12 consultations per month, with a maximum of probably 14 consultations. These may be on separate

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days spread throughout the month or occasionally there may be consultation on consecutive days, perhaps two or three at a time. There may be months when no services are performed. The individuals concerned are free to come and go as they like as no service can be required of them.

On a short term or temporary basis I feel the proposed use of retired officers comes clearly within the exemptions from the restrictions of Section 212 of the Economy Act. However, it appears that any retired officers who serve will be required to perform their duties over periods of months or years. The question is thereby presented as to whether the continuity of service over a long period would be construed as not being service "generally performed at infrequent intervals."

I feel that this is a very important aspect of my responsibility for national estimates and I request your advice as to whether the proposed use of the retired officers involved is so clearly within the ruling announced in the Schuyler case that we may inform the individuals concerned that, regardless of the length of time they remain in such relation to the Agency, they are not subject to the restrictions of Section 212 of the Economy Act and may continue to draw their retired pay for those days on which payment is made of fees for consultation with this Agency.

Sincerely,

Walter B. Smith  
Director

OGC/LRH:mls

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(Legal's subject copy was handed to the Comp. Gen.  
by Mr. [redacted] (OGC) on 27 September 1951)  
This copy was therefore made for our subject copy

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